



FLASH INFO

The « Macron » Draft Bill for “growth and economic activity” (“*pour la croissance et l’activité*”): new proposals to make the French labour market more flexible

The Macron Draft Bill (hereinafter, the “Bill”) was submitted to the Council of Ministers on December 10, 2014 and is currently discussed before the French Parliament since last January 22, 2015.

The Bill is heavily criticized and would improve, if enacted, significantly the French Labour Law since it includes various measures designed to make the French labour market more flexible.

Following the law no 2013-504 on securing employment dated June 14, 2013 (“*Loi relative à la sécurisation de l’emploi*”), the Bill includes measures such as Sunday working, Company savings schemes, the reform of the Labour Courts, the reform of the Labour Inspectorate, measures to combat unlawful international and cross-border supplies of services, etc.

Obviously, several amendments are expected until the Bill is passed.

The main measures which impact the French Labour Law are briefly presented below.

1. Sunday and night working (Articles 71 to 82 of the Macron Draft Bill)

The Bill attempts to reform the labour regulation on Sunday and night working.

The Bill provides for the extension of shops’ Sunday opening hours and provides, in particular that:

- The number of Sundays opening that may be granted by the mayors to non-food retail shops would be increased from 5 mandatory to 12. Thus, mayors will be allowed shops to open 12 Sundays a year, instead of 5 at the moment.
- The areas where derogations are currently granted to retail shops called as “touristic areas and urban areas of exceptional consumption” (“PUCE”) will be expanded into 3 new areas:
 - Shopping areas characterized by a strong trade activity and potentially particularly high demand that will be defined by decree. These provisions would replace Article L. 3132-25-1 of the French Labour Code.

- Tourist areas where there is a particularly high flow of tourists. These areas would replace the touristic areas or spa areas and areas with and exceptional influx of tourists or with permanent cultural activity (Article L. 3132-25 of the French Labour Code).
- International tourist areas including train stations, characterized by an international reputation and an exceptional influx of tourists who reside outside France. These areas would be bounded according to rules fixed by decree by the Minister of Labour, the Minister of Tourism and Trade following the opinion of the mayor, the chair of the inter-communal organization and the social partners. A new Article L. 3132-24 would be inserted into the French Labour Code.

In these areas, employers will be entitled to grant to all or part of their staff rest time on a rotational basis if they are covered by collective agreement: branch-level agreement, company-level agreement or territorial-level agreement or an agreement concluded in the conditions mentioned in II of Article L. 5125-4 of the French Labour Code (negotiation of a company agreement without union representative).

Sunday working shall be regulated by a collective agreement that must provide the principle according to which employees will work on Sunday on a voluntary basis exclusively and provide for specific benefits that are not defined in the Bill (higher wages, additional rest time, etc.).

Besides, the collective agreement or the unilateral decision of the employer will have to fix the conditions under which employer takes into account the evolution of the personal situation of their employees deprived of Sunday rest.

Shops that may already open on Sundays under the current legislation would have 3 years as from the entry into force of the Bill to enter into collective agreement with their employees, if such agreements do not exist yet.

The Bill also provides that retail stores located within international touristic areas should be allowed to open until midnight, without formality being required, on a voluntary basis and with specific benefits and additional rest time. In these retail stores, the night period would correspond to the period between 12:00 pm and 6:00 am (as opposed to the currently applicable period between 9:00 pm to 6:00 am).

2. Dismissals on economic ground (Articles 98 to 104 of the Macron Draft Bill)

The Bill provides clarification on a number of provisions introduced by the Law on securing employment of June 14, 2013 with respect to dismissals on economic ground.

- **Order of dismissals:** Article L. 1233-5 of the French Labour Code would be modified to expressly allow companies to set forth in a collective agreement or unilateral document the scope of application of the criteria to be used to determine the order of dismissals at a lower level than the one of the legal entity (at the level of an establishment).
- **Cancellation by a Court decision of collective lay-off plans validated or approved by the French Administration Authorities for insufficient reasoning (Articles L. 1233-57-1 to L.1233-57-4 of the French Labour Code):** the Bill remedies some undesirable effects of Court decisions. Today, when collective lay-off plans validated or approved by the French Administration Authorities are subsequently cancelled pursuant to a Court decision, such cancellation entails either the reinstatement of the dismissed employees, or the payment of an indemnification to such employees. In this case, the Bill provides that the French Authorities will be requested to issue a new decision that must be sufficiently reasoned. If this obligation is met, the cancellation would have no impact on the validity of the collective lay-off plan and would no longer entail the reinstatement of the employees or the payment of an indemnification by the employer.

- **Obligation to search for redeployment opportunities outside France:** this obligation should be simplified. The search process would be started at the initiative of the employee, and no longer at the initiative of the employer. It should be up to the dismissed employee to request the employer to be granted access to the list of employment positions outside France available within the company or the group to which the company belongs. As such, if the employee does not make such request, the employer would be entitled to limit its search for redeployment opportunity to the French territory.
- **Labour Authorities’ control for “small dismissals” (at least 10 employees over a period of 30 days within companies of at least 50 employees):** Currently this control cannot be performed for this type of dismissal since the French Labour Authority (“DIRECCTE” - Regional Directorate for Companies, Competition, Consumption, Labour and Employment) is informed of the dismissals after the dismissals have been notified. Reference to this control for “small dismissal” in Article L. 1233-53 of the French Labour Code would be deleted.

3. Employee savings schemes (Articles 36 and 40 of the Macron Draft Bill)

The Bill includes measures to simplify employee savings schemes. This reform is based on the findings and proposals of the advisory board for company savings schemes and employee share ownership (“COPIESAS”) which submitted its report to the Minister of Labour on November 26, 2014.

The measures include, simplifying, harmonizing and expanding access to company savings schemes, especially for employees of small and medium-sized Enterprises (SMEs).

In particular, the Bill provides that the social security tax paid by the employer (i.e. “*forfait social*”) would be reduced to 8% (instead of 20%) for the first profit-sharing schemes agreement (“*participation*”) or employee share-ownership agreement (“*intéressement*”) that is concluded within a company with less than 50 employees.

In addition, the Bill contains some measures to harmonize companies’ savings schemes and align some of the technical aspects relating to profit-sharing scheme (“*participation*”) and employee share-ownership (“*intéressement*”):

- The periods for paying out profits and share-ownership would be matched with a unique deadline: the 1st day of the 6th month following the period for which the rights were born;
- The period of unavailability for the profit-sharing scheme (“*participation*”) would start as from the 1st day of the 6th month following the period for which the rights were born (currently, the unavailability starts as from the 1st day of the 5th month following the period for which rights were born);
- A unique interest rate after exceeding the deadline for the payment to employees: the average yielding rate of private companies’ bonds (as published by the French administration) and increased to 1,33. Currently, there are two different rates: the average yielding rate of private companies’ bonds applies for profit-sharing scheme (“*participation*”) and the legal interest rate for employee share-ownership (“*intéressement*”).

The procedures for tacit renewal of profit-sharing agreement would also be simplified: employees would be allowed to require such renewal when such agreement provides for a tacit renewal and specifies that the agreement would be extended for a new period of 3 years (which is the legal duration of profit-sharing agreements).

Setting up a company retirement savings scheme (“*PERCO*”) would also be possible with the approval of two thirds of the employees in companies with no union representatives or works committee. Indeed, currently, only ordinary company savings schemes can be set up with the approval of two thirds of the employees in such companies.

Lastly, employees who do not hold “time-saving account” (“*CET*”) would be able to save 10 days of leave not taken in their PERCO (instead of 5 days currently) in order to bring an end to this inequality between employees holding “time-saving account” and those who do not.

4. Reclassifying the offence of obstruction (“*Délit d’entrave*”) (Article 85 of the Macron Draft Bill)

Currently the breach by the head of the company or a duly empowered representative of their obligations towards a staff representative body is a criminal offence known as “*délit d’entrave*” which is punished by a maximum of 1 year’s imprisonment and/or a maximum fine of € 3,750 and, for repeated offences, a maximum of 2 years’ imprisonment and/or a maximum fine of € 7,500.

According to the government, the prison sentence is hardly ever applied, but may deter foreign investment.

The Bill aims at abolishing prison sentences on the one hand, and increasing the financial penalties that may be imposed on the other hand.

5. Reforming the Labour Court system (Articles 83 and 84 of the Macron Draft Bill)

Today, proceedings before the French Labour Courts are lengthy and the time necessary for cases to be adjudicated are quite substantial.

The Bill identifies several sources of improvement in order to make Labour Courts’ procedure simpler and quicker.

Amicable proceedings such as conventional mediation would be encouraged (currently, conventional mediations are not available in the framework of proceedings initiated before Labour Courts, except in case of cross-border labour disputes).

If the attempt at conciliation fails, the Bill proposes to shorten the timeframe and better regulate the various phases of the proceedings, including at the conciliation stage. The Bill also provides that the adjudication panel of the Labour Court may sit in small committed (one judge elected by the employers and one judge elected by the employees) that must render its decision within a period of 3 months.

In addition, the Bill creates a true status as union legal defender (“*défenseur syndical*”) who could represent employees not only before Labour Courts but also before Court of Appeal in Labour disputes. Moreover, in companies with less than 11 employees, the union legal defender would benefit from leave authorizations up to 10 hours per month maximum in order to perform his/her duties and with preservation of his/her salary and related benefits (that will be reimbursed by the State).

Lastly, the Bill aims at providing better initial and ongoing training to officials working within the system; such training would be mandatory. In addition, the obligations of professional conduct imposed on officials would be more stringent and there would be a major overhaul of the disciplinary procedure.

6. Reform of the functioning of the Labour Inspectorate (Article 85 of the Macron Draft Bill)

The Bill empowers the government to take measures in order to extend the powers of Labour Inspectors allowing them to impose new sentences on companies for breach of labour law.

The Bill would reintroduce the provisions set forth in Article 20 of the law no 2014-288 of March 5, 2014 on occupational training, employment and social democracy that was approved by the French National Assembly and then removed after being discussed before the French Senate.

The Bill identifies several sources of improvement to extend the means of action of Labour Inspectors whenever carrying out a visit and detecting a violation of the labour legislation. An ordinance should provide clarification on the prerogatives of the different public entities and agents that may intervene in such issues, increase the access to the company documents, strengthen exchanges and recourses to external expertise for occupational health and safety matter.

In particular, the labour inspectors would dispose of new range of power aiming to repair violation, eliminate the occupational risks or reduce them.

- Labour inspectors would be allowed to impose fines on companies for breach of labour law (currently, the powers of the labour inspector only allow them to bring criminal proceedings against companies in violation of the Labour Code);
- The criminal sanctions and proceedings should be modernized and lead to more efficient judicial process (criminal settlement shall be introduced, the quantum and the offences shall be reviewed, etc.);
- The stages of formal notice, warning, improvement notice and the adversarial procedure might also be reinforced in order to condemn companies that knowingly breach the law.

7. News measures to enforce the legislation on cross-border postings of workers in France (Articles 95 to 97 of the Macron Draft Bill)

The Bill would give more powers to labour inspectors to control companies posting workers on French territory and extend penalties and sanctions created by the law no 2014-790 of July 2014 to combat posting fraud and abuse.

- **Increase of the overall administrative fine when parties fail to comply with the rules:** in particular, the maximum administrative fine that may be imposed in cases where cross-border rules are violated by companies posting workers on French territory is increased from € 10.000 to € 150.000. Today law stipulates that the service provider must tell the labour inspectorate where the posted worker is to work before being. The service provider must also appoint someone to liaise with the labour inspectorate during the period of posting. Before the posting starts, the contractor must verify that the service provider has complied with all necessary obligations relating to the posted worker. Currently, non-compliance with these rules can incur an administrative fine of up to € 2,000 per posted worker, or € 4.000 for repeat cases, but the overall fine cannot exceed € 10.000.
- **Creation of a new measure against the foreign services provider that fails to respect the worker's rights:** Labor inspectorate would be entitled to order suspension of the provision of the foreign services provider services. This suspension would be limited to a 1 month period and would apply only to specific infringement to mandatory rules (such as, the minimum wage, working time, health and safety rules, including working conditions and accommodation that are incompatible with human dignity).
- **Creation of a professional identification card for the employees of building and public works industry (“BTP”):** this card would be compulsory for companies established in France or abroad and that employ or provide employment to employees on building site.

8. Staff employee representatives (Articles 87, 89 and 90 of the Macron Draft Bill)

The Bill provides measures concerning the social dialogue within the company.

- **Trade unions would be informed of the results of the elections:** Employers would have to inform the trade unions recognized as representative within the company about the results of the elections for the Works council and the staff delegates by providing them with a copy of the minutes of the elections.
- **The compulsory consultations would automatically be put on the agenda of the meeting of the Health, Safety and Working Condition Committee (“CHSCT”) by the President or the secretary:** Article L. 4614-8 of the French Labour Code would be modified in this respect.
- **The judge of the Judicial Court would have exclusive competence for ruling on all disputes related to the pre-electoral agreement:** the Bill provides for the abolition of the administrative jurisdiction of the French Administration Authorities (i.e. DIRECCTE) in this matter.

9. New modalities for fulfilling the obligations to employ disabled workers (Articles 92 and 93 of the Macron Draft Bill)

The Bill provides new modalities for fulfilling the obligations related to the employment of disabled workers.

In particular, companies would be able to meet part of their employment obligation by:

- Outsourcing work to independent disabled workers (currently such services agreements/sub-contract can only be concluded with specific organizations employing disabled personnel (“*Atelier protégé*”, “*établissements et services d’aide par le travail*” and “*Centre de Distribution de travail à Domicile*”));
- Hosting disabled people to be placed them in a professional situation for a period of time.



Anna-Christina CHAVES

Avocat Associée / Partner

Responsable du département Droit social / Head of Labour Law Department

ac.chaves@stehlin-legal.com